

## **REMARKS**

The Office Action of April 11, 2005, has been considered by the Applicants. Claims 1, 7, 8, and 31-33 have been amended. Claims 1, 2, 4-8, and 10-33 remain pending in the Application. Reconsideration of the Application is requested.

### **I. Objections to the claims have been answered.**

The Examiner objected to claims 7, 8, and 31-33 as being of improper dependent form. Claims 7 and 8 have been amended to conform to the acceptable multiple dependent claim wording of MPEP § 608.01(n). Applicants request withdrawal of the objection.

### **II. The claims distinctly claim the subject matter regarded as the invention.**

Claims 8 and 31-33 were rejected under 35 U.S.C. 112, ¶ 2, as indefinite. Applicants traverse the rejections.

Claims 8 and 31-33 have been amended as suggested by the Examiner. In this regard, the prior amendment of 10/22/2004 inadvertently omitted changing the word "and" to "or" in claim 8. In the Remarks of 10/22/2004, the correct intent of claim 8 was stated: "the low melting point additive comprises chocolate base, or chocolate base in combination with lard, coconut oil, or macrogol." Support for this limitation can also be found in the specification at the paragraph beginning on page 9, line 19. Claims 31-33 recite specifically which of the three additives listed in claim 8 is combined with the chocolate base. These amended claims further limit the subject matter of the claims they depend from and are definite.

Applicants request withdrawal of the rejection based on 35 U.S.C. 112, ¶ 2.

### **III. The claims are not anticipated under 35 U.S.C. 102.**

Claims 1, 2, 4-6, 10, 24, and 26-28 were rejected under 35 U.S.C. 102(b) as anticipated by Scheibl. Claims 1, 2, 4-6, 10, 12, 13, 15-17, and 24-28 were rejected under 35 U.S.C. 102(e) as anticipated by Dugger. Applicants traverse the rejections.

Claim 1 has been amended to recite that the chocolate base is subjected to aging. Support for this amendment can be found in the specification at page 20, lines 28-29.

Schiebl is directed to an orally administered dental composition, mainly chewable confectionaries, for cleaning the teeth comprising yeast. He discloses fillings comprising chocolate and cacao butter. He does not teach or suggest that the fill material be subjected to aging.

Dugger discloses a soft-bite gelatin capsule for administering pharmacologically active compounds. He teaches the use of chocolate powder in a chewable bite capsule and further describes the use of glycerine as a plasticizer in the gelatin shell of the capsule. He does not teach or suggest that the fill material be subjected to aging.

Neither Scheibl nor Dugger teach that the fill material in their capsule is subjected to aging. Therefore, these two references do not anticipate the amended claims. Applicants request withdrawal of the rejections based on 35 U.S.C. 102.

#### **IV. The claims are not obvious under 35 U.S.C. 103(a).**

Claims 1, 2, 4-7, 10-17, and 19-30 were rejected under 35 U.S.C. 103(a) as obvious over Scheibl or Dugger in view of Borkan or Ebert. Claim 18 was also rejected as obvious over Scheibl or Dugger in view of Mehta. Applicants traverse the rejections.

The cited references do not teach all claim limitations. As stated, Scheibl and Dugger do not teach or suggest aging the fill material of the capsule. Borkan and Ebert are used for their teachings regarding the capsule itself; they do not remedy the deficiencies of Scheibl and Dugger regarding aging the fill material. Therefore, no combination of these references would render the instant claims obvious.

With regard to claim 18, Applicants note that any claims depending from a non-obvious claim are also non-obvious. See MPEP § 2143.03 and *In re Fine*, 5 USPQ2d 1596 (Fed. Cir. 1988).

Applicants request withdrawal of the rejections under 35 U.S.C. 103(a).

Applicants note that the subject matter of claim 8 was not rejected as anticipated or obvious over any of the cited references. Four references teach a filling comprising a chocolate and Borkan discloses the use of macrogol as a filler, but none of the references

teach or suggest a combination of chocolate with lard, coconut oil, macrogol, or combinations thereof.


### CONCLUSION

For the reasons given above, it is respectfully submitted all pending claims (1, 2, 4-8, and 10-33) are now in condition for allowance. It is believed that no reexamination or new search is required. Withdrawal of the rejections and issuance of a Notice of Allowance is requested.

In the event the Examiner considers personal contact advantageous to the disposition of this case, she is hereby authorized to call Richard M. Klein, at telephone number 216-861-5582, Cleveland, OH.

Respectfully submitted,

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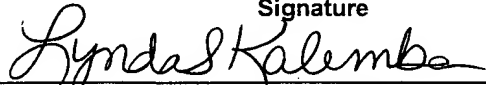
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